

JONATHAN PITEL, WSBA #47516
PENNY L. ALLEN, WSBA #18821
SAMANTHA HELLWIG, WSBA #50634
Counsel for Defendants
1125 Washington St SE
Olympia, WA 98504-0110

The Honorable Tiffany M. Cartwright

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

PERIDOT TREE WA, INC.,

Plaintiff,

v.

WASHINGTON STATE LIQUOR AND
CANNABIS CONTROL BOARD and
WILLIAM LUKELA, in his legal
capacity as Director of Washington State
Liquor and Cannabis Board,

Defendants.

NO. 3:23-cv-06111-TMC

DEFENDANTS' MOTION FOR
ENTRY OF FINAL ORDER
PURSUANT TO FRCP 65(A)(2)

Noting Date: January 26, 2024
Without Oral Argument

State Defendants request that the Court issue a final order on the merits in this matter, in light of the Court's recent order denying Plaintiff's Motion for Preliminary Injunction. In part, that Order determined that Plaintiff Peridot Tree WA (Peridot) was unlikely to prevail on the merits as "Peridot cannot use the dormant Commerce Clause to demand a constitutional right to participate in an illegal interstate market." ECF No. 33 at 19. That Order renders Plaintiff's claims that Washington's cannabis residency restrictions are unconstitutional invalid as a matter of law, and resolves the entirety of Plaintiff's First Amended Complaint. ECF No. 27.

Prior to the Court's order, the parties fully briefed their legal arguments and submitted evidence, which this Court considered. The underlying evidentiary record may be admitted pursuant to FRCP 65(a)(2) at a future trial on the merits and does not need to be repeated. More

1 importantly, the Court’s ruling that the dormant Commerce Clause does not provide Plaintiff
 2 with a constitutionally protected right to engage in a federally illegal market fully resolves the
 3 legal issues presented in this matter. As Plaintiff argued, “This case presents a pure question
 4 of law: does Defendants’ residency requirement violate the dormant Commerce Clause.” ECF
 5 No. 25 at 9. Now that the Court has resolved that issue, there is little benefit to the parties or
 6 the Court in prolonging a final ruling on Plaintiff’s claims. Instead, a final order would permit
 7 Plaintiff to pursue review in the Ninth Circuit Court of Appeals, if they so choose.

8 Although this Court did not convert Plaintiff’s preliminary injunction motion into a
 9 trial on the merits pursuant to Rule 65(a)(2), it should do so now. Such a ruling would allow
 10 the parties and the Court to avoid the time and costs associated with further motions practice
 11 or litigation—only to have this Court repeat its prior ruling. This approach is consistent with
 12 the guidance provided by the Ninth Circuit. Under Rule 65(a)(2) the court may consolidate a
 13 trial on the merits with a preliminary injunction hearing, “before or after beginning the hearing
 14 on a motion for a preliminary injunction.” A court’s consolidation is reviewed for abuse of
 15 discretion and “will not be overturned on appeal absent a showing of substantial prejudice in
 16 the sense that a party was not allowed to present material evidence.” *Michenfelder v. Sumner*,
 17 860 F.2d 328, 336 (9th Cir. 1988). And where a complaint rests on legal issues or the “central
 18 challenge” of a complaint and preliminary injunction relates to government agency’s legal
 19 authority to pursue a course of conduct which requires no additional factual development, a
 20 final determination on the merits is permitted. *See Slidewaters LLC v. Washington State Dep’t*
 21 *of Lab & Indus.*, 4 F.4th 747, 760 (9th Cir. 2021), *cert denied sub nom. Slidewaters LLC v.*
 22 *Washington Dep’t of Lab. & Indus.*, 211 L. Ed. 2d 487, 142 S.Ct. 779 (2022).

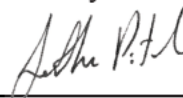
23 Because the Court’s Order Denying Motion for Preliminary Injunction decides the
 24 entirely legal “central challenge” in this matter, Defendants respectfully request that this Court
 25 enter a final order on the merits resolving this matter.
 26

Word Count Certification

I certify that this memorandum contains 515 words, in compliance with the Local Civil Rules.

DATED this 11th day of January, 2024.

ROBERT W. FERGUSON
Attorney General



JONATHAN PITEL, WSBA #47516
Assistant Attorney General

PENNY L. ALLEN, WSBA #18821
Senior Counsel

SAMANTHA HELLWIG, WSBA #50634
Assistant Attorney General

Counsel for Defendants

1125 Washington St SE

Olympia, WA 98504-0110

Phone: (360) 753-2702

E-mail: Jonathan.Pitel@atg.wa.gov

PennyL.Allen@atg.wa.gov

Samantha.hellwig@atg.wa.gov

LALolyEF@atg.wa.gov

CERTIFICATE OF SERVICE

I, Jonathan E. Pitel, hereby certify that on December 11, 2023, I caused the foregoing
**DEFENDANTS' MOTION FOR ENTRY OF FINAL ORDER PURSUANT TO FRCP
65(A)(2)** to be served upon the below listed counsel for Plaintiff:

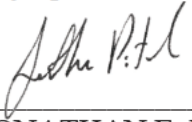
Via CM/ECF portal:

Jimmy Garg
300 Lenora Street #1063
Seattle, WA 98121

Jeffery M. Jensen
9903 Santa Monica Blvd #890
Beverly Hills, CA 90212

I certify under penalty of perjury under the laws of the state of Washington that the
foregoing is true and correct.

DATED this 11th day of December 2023, at Olympia, WA.



JONATHAN E. PITEL, WSBA # 47516
Assistant Attorney General